

### REMARKS

Claims 1-10, 13-17 and 21-22 are pending. Claims 1, 13 and 14 are the only independent claims. Favorable reconsideration is respectfully requested.

#### I. The Finality of the Current Office Action

The Office Action mailed March 19, 2008 was indicated as being final in spite of the fact that the most recent response by the Applicant had overcome all of the art rejections of the September 20, 2007 Final Office Action without substantively amending the claims.

In a telephone conversation shortly before the issuance of the March 19, 2008 Office Action, the Examiner had initially explained to Applicant's undersigned representative that the Action was being made final because of Applicant's alleged delay in removing Mills as a reference under Section 103(c), based on its common assignment with the present case.

However, in a telephone message and subsequent telephone interview with SPE Kalinowski on July 8, 2008, Applicant's undersigned representative explained that the Applicant did not have the option prior to the February 20, 2008 Amendment of invoking the provisions of Section 103(c) because prior to the September 20, 2007 Office Action, the rejection based on Mills was not an obviousness rejection. That is, the earlier rejection based on Mills, in the Office Action mailed September 12, 2006, was a rejection under Sections 102(e) and 102(f). Thus, Applicant did not have the option at that time of invoking the provisions of Section 103(c), which only applies to obviousness rejections.

In the July 8, 2008 interview, SPE Kalinowski indicated that, in view of the foregoing facts, he agrees that the March 19, 2008 Office Action should have been non-final. An Interview Summary was received thereafter indicating that the outstanding Office Action is non-final.

## II. The Substance of the Current Office Action

Claims 1-10, 13 and 14 were rejected under 35 U.S.C. § 103 over U.S. Patent 5,375,055 (Togher et al.) in view of U.S. Patent Publication 2003/88499 (Gilbert et al.) and U.S. Patent 6,366,890 (Usrey). Applicant traverses.

Independent claim 1 is directed to a computerized trading system for trading instruments between trading parties. The system includes, inter alia: a plurality of trader order input terminals connected to a communications network, each for inputting orders into the system and for generating electronic orders including bid and/or offer orders and for communication to traders of order information received from other input terminals over the network; at least one broker order input terminal connected to the communications network for inputting orders into the system and for generating electronic orders including bid and/or offer orders on behalf of a selected one of a plurality of client traders and for communication to a broker of order information received from other input terminals over the network; at least one matching engine computer connected to the network for matching bid and offer orders input into the system from the order input devices and for selectively executing deals where prices are matched; and one or more market distributor computers connected to the network for distributing order information to the order input terminals, the one or more market distributor computers being responsive to the order information and the matching engine computer, and the one

or more market distributor computers also distributing to the trader order input terminals an indication of the amount of the market in the instrument being traded that has been input from the at least one broker order input terminal.

In deals carried out by means of a broker, the broker would typically have to confirm a possible deal with a client, usually by telephone, before the deal is carried out. This is discussed in the specification, at, for example, page 22, lines 3 to 23 and illustrated in Figure 9. Therefore, a trade conducted with a broker as a counterparty will be very much slower than one conducted with a trader as a counterparty. In a computerized trading system, the bids and offers can be matched almost instantaneously if credit between the parties is pre-screened; the entire process can be automated and run by computer. The requirement to have an extra step to confirm the availability of credit between parties acting on behalf of the client causes considerable delay when, in practice, this is generally done by telephone.

A illustration of the delay is shown in Figure 18 and in the corresponding portion of the specification. Figure 18 illustrates the process where the price hit has been submitted by a voice broker trading on the anonymous trading system. It is described at page 27, line 25 to page 28, line 27. It can be seen that once a broker hits a quote (506), the anonymous trading system suspends the quote (508) and the broker then checks with his client trader whether his client trader has credit with the trader hitting the quote (512). As mentioned above, this check is generally done by telephone, or it could be done by some other means, for example, by e-mail or by sending an electronic message to the client trader.

As mentioned above, this quote checking process takes some time and as illustrated in Figure 18 during this time the quote is suspended from the system. This means that other traders could not hit this quote during this not inconsiderable period and an opportunity to have a quote successfully hit may be missed. If this occurs, traders are likely to be dissuaded from trading on an electronic trading system detrimentally affecting the liquidity of the trading system.

It would be beneficial for traders to have an indication of the presence of brokers trading on a computerized trading system and this is achieved by the invention of claim 1, 13 and 14 by distributing to the trader input terminals an indication of the amount of the market in the instrument being traded that has been input from at least one broker input terminal. This provides the substantial advantage that voice traders (brokers) can be linked into an automated trading system so enabling trades involving brokers to contribute to the liquidity of the trading system. It was conceded in the Office Action that neither Togher nor Gilbert teach this features. However, the position was taken in the Office Action that Usrey, "teaches an indication of the amount of the market has been input from a terminal (at Figure 15 "pie chart": column 11, lines 41 to 59)". Usrey does not disclose this at all.

As shown at, for example, the title to Figure 15, the pie chart shows the market for various foodstuffs, such as, cheese puffs, corn chips and popcorn, sold in a retail chain store over a 12-week period. It does not disclose in any way, shape or form, one or more market distributor computers distributing to the trader order input terminals an indication of the amount of the market in the instrument being traded that has been input from at least one broker order input terminal, as recited in the independent claims. For at least this

reason, even when combined, the cited references do not teach every feature of the independent claims.

Moreover, foodstuffs, such as, cheese puffs and popcorn, are not financial instruments. Financial instruments are, for example, contractual rights to receive or deliver cash or another financial instrument, such as forward rate agreements, Spot FX and swaps as described at page 1, lines 8 to 10 of the application in the field of the invention section. As mentioned in the abstract of Usrey, that patent relates to the field of retail product sales, where a retail store would like to identify the most popular products on the market to make sure the product assortment of the store carries those popular products. As Usrey relates to a completely different field to that of the present application, a skilled person would not consider it. Thus, the combination is believed improper since there would have been no reason for one in the field of financial instruments to consider a document like Usrey. For this additional reason, it is not believed the rejection is tenable.

In view of the foregoing, independent claims 1, 13 and 14 are believed patentable over the cited references. The dependent claims are believed patentable for at least the same reasons as their respective base claims.

### III. Request for Interview

Applicant requests that, prior to issuance of the next Office Action, the Examiner telephone Applicant's undersigned representative to schedule a telephone interview in the hope of moving the present case towards allowance.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

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Respectfully submitted,

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